

REASONABLE CARE CHECKLIST

Introduction:

One of the most significant effects of the Customs Modernization Act is the establishment of the clear requirement that parties exercise “reasonable care” in importing into the United States. Section 484 of the Tariff Act, as amended, requires an importer of record “using reasonable care” to make entry by filing such information as is necessary to enable the Customs Service to determine whether the merchandise may be released from customs custody, “and using reasonable care –“ complete the entry by filing with the Customs Service the declared value, classification and rate of duty” and “such other documentation … or information as is necessary to enable the Customs Service to … properly assess duties … collect accurate statistics … determine whether any other applicable requirement of law … is met.”

The facts and circumstances surrounding every import transaction differ – from the experience of the importer to the nature of the imported articles. Therefore, a foolproof reasonable care “checklist” cannot be developed which would cover every import transaction. The following list of questions is provided for guidance to the importing community and may be helpful to importers in determining a program, framework or methodology that will assist them in meeting “reasonable care” responsibilities and avoiding compliance problems. This information is provided to promote enhanced compliance with the Customs laws and regulations, it has no legal, binding or precedential effect on Customs or the importing community.

General Questions:

1. If you have not retained an expert to assist you in complying with Customs requirements, do you have access to the Customs Regulations (Title 19 of the Code of Federal Regulations), the Harmonized Tariff Schedule of the United States, and the GPO publication “Customs Bulletin and Decisions?” Do you have access to the Customs Internet Website, Customs Electronic Bulletin Board or other research service to permit you to establish reliable procedures and facilitate compliance with Customs laws and regulations?
2. Has a responsible and knowledgeable individual within your organization reviewed the Customs documentation prepared by you or your expert to ensure that it is full, complete and accurate? If that documentation was prepared outside your own organization, do you have a reliable system in place to insure that you receive copies of the information as submitted to Customs; that it is reviewed for accuracy; and that Customs is timely apprised of any needed corrections?
3. If you use an expert to assist you in complying with Customs requirements, have you discussed your importations in advance with that person and have you provided that person with full, complete and accurate information about the import transactions?
4. Are identical transactions or merchandise handled differently at different ports or Customs offices within the same port? If so, have you brought this to the attention of the appropriate Customs officials?

Merchandise Description & Tariff Description:

Basic Question: Do you know or have you established a reliable procedure or program to ensure that you know what you ordered, where it was made and what it is made of?

1. Have you provided or established reliable procedures to ensure you provide a complete and accurate description of your merchandise to Customs in accordance with 19 U.S.C. 1481? (Also, see 19 CFR 141.87 and 19 CFR 141.89 for special merchandise description requirements.)
2. Have you provided or established reliable procedures to ensure you provide a correct tariff classification of your merchandise to Customs in accordance with 19 U.S.C. 1484?
3. Have you obtained a Customs “ruling” regarding the description of the merchandise or its tariff classification (See 19 CFR Part 177), and if so, have you established reliable procedures to ensure that you have followed the ruling and brought it to Customs attention?
4. Where merchandise description or tariff classification information is not immediately available, have you established a reliable procedure for providing that information, and is the procedure being followed?
5. Have you participated in a Customs pre-classification of your merchandise relating to proper merchandise description and classification?
6. Have you consulted the tariff schedules, Customs informed compliance publications, court cases and/or Customs rulings to assist you in describing and classifying the merchandise?
7. Have you consulted with a Customs “expert” (e.g., lawyer, broker, accountant, or Customs consultant) to assist in the description and/or classification of the merchandise?
8. If you are claiming a conditionally free or special tariff classification/provision for your merchandise (e.g., GSP HTS Item 9802, NAFTA, AGOA, CBTPA, etc.), how have you verified that the merchandise qualifies for such status? Have you obtained or developed reliable procedures to obtain any required or necessary documentation to support the claim? If making a duty-free preference claim, do you already have the required certificate of origin in your possession?
9. Is the nature of your merchandise such that a laboratory analysis or other specialized procedure is suggested to assist in proper description and classification?
10. Have you developed a reliable program or procedure to maintain and produce any required Customs entry documentation and supporting information?

Valuation:

Basic Questions: Do you know or have you established reliable procedures to know the “price actually paid or payable” for your merchandise?

Do you know the terms of sale; whether there will be rebates, tie-ins, indirect costs, additional payments; whether “assists” were provided, commissions or royalties paid?

Are amounts actual or estimated?

Are you and the supplier “related parties?”

1. Have you provided or established reliable procedures to provide Customs with a proper declared value for your merchandise in accordance with 19 U.S.C. 1484 and 19 U.S.C. 1401a?
2. Have you obtained a Customs “ruling” regarding the valuation of the merchandise (See 19 CFR Part 177), and if so, have you established reliable procedures to ensure that you have followed the ruling and brought it to Customs attention?
3. Have you consulted the Customs valuation laws and regulations, Customs Valuation Encyclopedia, Customs informed compliance publications, court cases and Customs rulings to assist you in valuing merchandise?
4. Have you consulted with a Customs “expert” (e.g., lawyer, accountant, broker, Customs consultant) to assist in the valuation of the merchandise?
5. If you purchased the merchandise from a “related” seller, have you established procedures to ensure that you have reported that fact upon entry and taken measures or established reliable procedures to ensure that value reported to Customs meets one of the “related party” tests?
6. Have you taken measures or established reliable procedures to ensure that all of the legally required costs or payments associated with the imported merchandise have been reported to Customs (e.g., assists, all commissions, indirect payments or rebates, royalties, etc.)?
7. If you are declaring a value based on a transaction in which you were/are not the buyer, have you substantiated that the transaction is a bona fide sale at arm’s length and that the merchandise was clearly destined to the United States at the time of sale?
8. If you are claiming a conditionally free or special tariff classification/provision for your merchandise (e.g., GSP, HTS Item 9802, NAFTA, AGOA, CBTPA, etc.), have you established a reliable system or program to ensure that you reported the required value information and obtained any required or necessary documentation to support the claim?
9. Have you established a reliable program or procedure to produce any required entry documentation and supporting information?

Country of Origin – Marking – Quota:

Basic Question: Have you taken reliable measures to ascertain the correct country of origin for the imported merchandise?

1. Have you established reliable procedures to ensure that you report the correct country of origin on Customs entry documents?
2. Have you established reliable procedures to verify or ensure that the merchandise is properly marked upon entry with the correct country of origin (if required) in accordance with 19 U.S.C. 1304 and any other applicable special marking requirement (watches, gold, textile labeling, etc.)?
3. Have you obtained a Customs “ruling” regarding the proper marking and country of origin of the merchandise (See 19 CFR Part 177), and if so, have you established reliable procedures to ensure that you followed the ruling and brought it to Customs attention?
4. Have you consulted with a Customs “expert” (e.g., lawyer, accountant, broker, Customs consultant) regarding the correct country of origin/proper marking of your merchandise?
5. Have you taken reliable and adequate measures to communicate Customs country of origin marking requirements to your foreign supplier prior to importation of your merchandise?
6. If you are claiming a change in the origin of the merchandise or claiming that the goods are of U.S. origin, have you taken required measures to substantiate your claim (e.g., Do you have U.S. milling certificates or manufacturer’s affidavits attesting to the production in the U.S.)?
7. If you are importing textiles or apparel, have you developed reliable procedures to ensure that you have ascertained the correct country of origin in accordance with 19 U.S.C. 3592 (Section 334, Pub. Law 103-465) and assured yourself that no illegal transshipment or false or fraudulent practices were involved?
8. Do you know how your goods are made from raw materials to finished goods, by whom and where?
9. Have you checked with Customs and developed a reliable procedure or system to ensure that the quota category is correct?
10. Have you checked or developed reliable procedures to check the Status Report on Current Import Quotas (Restraint Levels) issued by Customs to determine if your goods are subject to a quota category that has “part” categories?
11. Have you taken reliable measures to ensure that you have obtained the correct visas for your goods if they are subject to visa categories?

12. In the case of textile articles, have you prepared or developed a reliable program to prepare the proper country declaration for each entry, i.e., a single country declaration (if wholly obtained/produced) or a multi-country declaration (if raw materials from one country were produced into goods in a second)?
13. Have you established a reliable maintenance program or procedure to ensure you can produce any required entry documentation and supporting information, including any required certificates of origin?

Intellectual Property Rights:

Basic Question: Have you determined or established a reliable procedure to permit you to determine whether your merchandise or its packaging bear or use any trademarks or copyrighted matter or are patented and, if so, that you have a legal right to import those items into, and/or use those items in, the U.S.?

1. If you are importing goods or packaging bearing a trademark registered in the U.S., have you checked or established a reliable procedure to ensure that it is genuine and not restricted from importation under the "gray-market" or parallel import requirements of U.S. law (See 19 CFR 133.21), or that you have permission from the trademark holder to import such merchandise?
2. If you are importing goods or packaging that consist of, or contain registered copyrighted material, have you checked or established a reliable procedure to ensure that it is authorized and genuine? If you are importing sound recordings of live performances, were the recordings authorized?
3. Have you checked or developed a reliable procedure to see if your merchandise is subject to an International Trade Commission or court ordered exclusion order?
4. Have you established a reliable procedure to ensure that you maintain and can produce any required entry documentation and supporting information?

Miscellaneous Questions:

1. Have you taken measures or developed reliable procedures to ensure that your merchandise complies with other agency requirements (e.g., FDA, EPA, DOT, CPSC, FTC, Agriculture, ATF, DEA, etc.) prior to or upon entry, including the procurement of any necessary licenses or permits?
2. Have you taken measures or developed reliable procedures to check to see if your goods are subject to a Commerce Department dumping or countervailing duty investigation or determination, and if so, have you complied or developed reliable procedures to ensure compliance with Customs reporting requirements upon entry (e.g., 19 CFR 141.61)?
3. Is your merchandise subject to quota/visa requirements, and if so, have you provided or developed a reliable procedure to provide a correct visa for the goods upon entry?

4. Have you taken reliable measures to ensure and verify that you are filing the correct type of Customs entry (e.g., TIB, T&E, consumption entry, mail entry, etc.), as well as ensure that you have the right to make entry under the Customs Regulations?

Additional Questions for Textile and Apparel Importers:

Note: Section 333 of the Uruguay Round Implementation Act (19 U.S.C. 1592a) authorizes the Secretary of the Treasury to publish a list of foreign producers, manufacturers, suppliers, sellers, exporters, or other foreign persons who have been found to have violated 19 U.S.C. 1592 by using certain false, fraudulent or counterfeit documentation, labeling, or prohibited transshipment practices in connection with textiles and apparel products. Section 1592a also requires any importer of record entering, introducing, or attempting to introduce into the commerce of the United States textile or apparel products that were either directly or indirectly produced, manufactured, supplied, sold, exported, or transported by such named person to show, to the satisfaction of the Secretary, that such importer has exercised reasonable care to ensure that the textile or apparel products are accompanied by documentation, packaging, and labeling that are accurate as to its origin. Under Section 1592a, reliance solely upon information regarding the imported product from a person named on the list does not constitute the exercise of reasonable care. Textile and apparel importers who have some commercial relationship with one or more of the listed parties must exercise a degree of reasonable care in ensuring that the documentation covering the imported merchandise, as well as its packaging and labeling, is accurate as to the country of origin of the merchandise. This degree of reasonable care must rely on more than information supplied by the named party.

In meeting the reasonable care standard when importing textile or apparel products and when dealing with a party named on the list published pursuant to Section 592A, an importer should consider the following questions in attempting to ensure that the documentation, packaging, and labeling is accurate as to the country of origin of the imported merchandise. The list of questions is not exhaustive but is illustrative.

1. Has the importer had a prior relationship with the named party?
2. Has the importer had any detentions and/or seizures of textile or apparel products that were directly or indirectly produced, supplied, or transported by the named party?
3. Has the importer visited the company's premises and ascertained that the company has the capacity to produce the merchandise?
4. Where a claim of an origin conferring process is made in accordance with 19 CFR 102.21, has the importer ascertained that the named party actually performed the required process?
5. Is the named party operating from the same country as is represented by that party on the documentation, packaging or labeling?
6. Have quotas for the imported merchandise closed or are they nearing closing from the main producer countries for this commodity?
7. What is the history of this country regarding this commodity?

8. Have you asked questions of your supplier regarding the origin of the product?
9. Where the importation is accompanied by a visa, permit, or license, has the importer verified with the supplier or manufacturer that the visa, permit, and/or license is both valid and accurate as to its origin? Has the importer scrutinized the visa, permit or license as to any irregularities that would call its authenticity into question?